

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

AMY BUMBARGER,

Plaintiff,

V.

COMENITY BANK,

Defendant

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT

AMY BUMBARGER (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against COMENITY BANK (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania
and as such, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing Pittsburgh, Pennsylvania 15236.

4 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

5
6 7. Defendant is a corporation that has its office located at One Righter
7 Parkway, Suite 100, Wilmington, Delaware 19803.

8 8. Defendant is a “person” as that term is defined by 47 U.S.C.
9 §153(39).

10
11 9. Defendant acted through its agents, employees, officers, members,
12 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
13 representatives, and insurers.

14 **FACTUAL ALLEGATIONS**

15
16 10. Plaintiff has a cellular telephone number that she has had for more
17 than one year.

18 11. Plaintiff has only used this number as a cellular telephone number.

19
20 12. The phone number has been assigned to a cellular telephone service
21 for which Plaintiff incurs a charge for incoming calls.

22 13. Plaintiff never provided permission to Defendant to call her cellular
23 telephone number or to contact her regarding any goods or services offered by
24 Defendant.
25

1 14. Beginning in February 2015, and continuing through late May 2015,
2 Defendant called Plaintiff on her cellular telephone an average of four (4) to five
3 (5) times each day.

4 15. When contacting Plaintiff on her cellular telephone, Defendant used
5 an automatic telephone dialing system and automatic and/or pre-recorded
6 messages.
7

8 16. Defendant's messages would state its name.

9 17. Defendant's telephone calls were not made for "emergency purposes."
10

11 18. In February 2015, Plaintiff spoke with Defendant and told them to
12 stop calling her on her cellular telephone.

13 19. Defendant heard Plaintiff's revocation of consent, but did not update
14 its records.
15

16 20. Rather, Defendant continued calling Plaintiff on her cellular
17 telephone.

18 21. Plaintiff estimates that Defendant called her on her cellular telephone
19 forty seven (47) times after she revoked consent in early February 2015.
20

21 **DEFENDANT VIOLATED THE**
22 **TELEPHONE CONSUMER PROTECTION ACT**

23 22. Plaintiff incorporates the forgoing paragraphs as though the same were
24 set forth at length herein.
25

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, AMY BUMBARGER, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: July 30, 2015

KIMMEL & SILVERMAN, P.C.

By: /s/ Craig Thor Kimmel

CRAIG THOR KIMMEL

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